

# **CONTINUATION OF CLAIM CLOSURES/SETTLEMENTS TOPIC**



**Labor-Management Advisory Council on  
Workers' Compensation – May 6, 2008**

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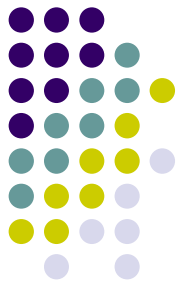
# Why Claim Closures/ Settlements Topic?



Currently, indemnity benefits are open indefinitely and medical benefits terminate if not used for a period of 60 consecutive months

WCRI Administrative Inventory of Montana:

- MT has lower % than other states of indemnity and medical claim settlements
- ERD/WCC data 2000-03 – 10-11% indemnity claims settled and 3% closed future medical benefits
- WCRI 2002 Compscope Data - 10 states
  - Ranged 10% in TX to 49% in TN
  - 10 State median - 38% indemnity claims settled
  - Majority close future medical benefits

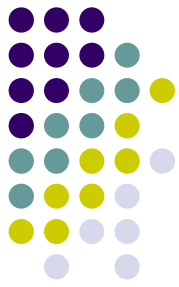


# HB738 – 2007 MT Legislature

- Initially, contained a statutory provision for closing indemnity and medical benefits if not used within 2 years of filing a claim or within 5 years from last payment of benefits, whichever is later
- Labor representatives wanted a provision for a notice to injured workers prior to automatic closure
- Management didn't agree since no prior notice now when closing medical benefits and difficulty with implementing a prior notice
- Statutory closure provision deleted from HB738
- Labor and Management agreed to refer this issue to the LMAC on workers' compensation

# ERD RESEARCH OF OTHER STATES' SETTLEMENT PROVISIONS

## SUMMARY OF SETTLEMENTS THAT MAY CLOSE MEDICAL BENEFITS



### STATES THAT ALLOW DISPUTED MEDICAL BENEFITS TO SETTLE & CLOSE = 11

Arizona, Georgia, [Kentucky](#), Massachusetts, [Montana](#), New Jersey, Oklahoma, [South Dakota](#), [Utah](#), Virginia, Wisconsin

### STATES THAT ALWAYS OR OFTEN SETTLE MEDICAL BENEFITS UNLESS SPECIFICALLY RESERVED = 8

[Colorado](#), Illinois, [Kansas](#), Michigan, New York, Pennsylvania, Rhode Island, West Virginia

### STATES THAT DON'T ALLOW CLOSURE OF MEDICAL BENEFITS = 7

Delaware – Rarely

NO: Nevada, New Hampshire, New Mexico, [Oregon](#), Texas, and [Washington](#)

### STATES THAT ALLOW MEDICAL BENEFITS TO SETTLE IF BEST INTEREST OF EMPLOYEE = 6

Alabama, [Arkansas](#), Connecticut, Florida, Louisiana, Nebraska

### STATES THAT ALLOW MEDICAL BENEFITS TO SETTLE IF COMPLIES WITH LAW = 6

Alaska, [Hawaii](#), [Idaho](#), Indiana, Iowa, Minnesota

### STATES THAT ALLOW MEDICAL BENEFITS TO SETTLE ONLY AFTER HEARING = 5

Maine, Maryland, Mississippi, Missouri, South Carolina

### STATES THAT ALLOW MEDICAL BENEFITS TO SETTLE WITH OTHER RESTRICTIONS = 5

North Carolina, [North Dakota](#), [Tennessee](#), Vermont, and [Wyoming](#)

### STATES THAT ALLOW MEDICAL BENEFITS TO SETTLE IF AMOUNT IS ADEQUATE = 2

California and Ohio

### STATES IN WHICH THE ADMINISTRATIVE AGENCY APPROVES SETTLEMENTS = 17 – SIMILAR TO MONTANA

### STATES THAT REQUIRE APPROVAL BY COURT, ALJ, COMMISSION OR BOARD = 28

### ALL STATES THAT ALLOW CLOSURE OF MEDICAL BENEFITS CONSIDER MEDICARE'S INTEREST

# SUMMARY OF STATUTE OF LIMITATIONS IN OTHER STATES THAT CLOSE BENEFIT ELIGIBILITY

*2006 Edition Workers' Compensation Law ALFA (Global Legal Network)*



## STATES WITH A CLAIM FILING STATUTE OF LIMITATION AND A STATUTE OF LIMITATION ON BENEFITS = 34

### 1 YEAR – 7 STATES:

California – Both  
Florida – Both  
[Idaho – Indemnity](#)  
Louisiana – Both  
Mississippi – Indemnity  
South Carolina – Indemnity  
[Tennessee – Indemnity](#)

### 2 YEARS – 14 STATES:

Alabama – Indemnity  
Alaska – Indemnity  
[Arkansas – Indemnity](#)  
Georgia – Both  
[Kentucky – Indemnity](#)  
Illinois – Indemnity  
Indiana – Both  
[Kansas – Indemnity](#)  
Michigan – Both  
Missouri – Both  
Nebraska – Both  
New Jersey – Both  
North Carolina – Both  
Oklahoma – Both

### 3 YEARS – 4 STATES:

Iowa – Indemnity  
Pennsylvania – Indemnity  
[South Dakota – Both](#)  
Utah – Both

### 4 YEARS – 2 STATES:

New Hampshire – Indemnity  
[Wyoming – Both](#)

### 5 YEARS – 4 STATES:

Delaware – Indemnity  
Hawaii – Both  
[Montana – Medical](#)  
[Oregon – Indemnity](#)

### 6 YEARS – 1 STATE:

Maine – Both

### 10 YEARS – 1 STATE:

Rhode Island – Indemnity

### 12 YEARS – 1 STATE:

Wisconsin – Both

## STATES WITH A CLAIM FILING STATUTE OF LIMITATION BUT NO STATUTE OF LIMITATION ON BENEFITS = 16

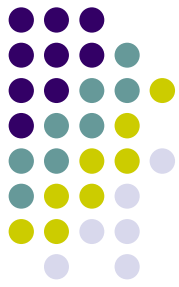
### STUDY STATES:

[Colorado – Process to close 2 years](#)  
[North Dakota – Process to close 4 years](#)  
[Washington – No closure](#)

### OTHER:

Arizona  
Connecticut  
Maryland  
Massachusetts  
Minnesota  
Nevada  
New Mexico  
New York  
Ohio  
Texas  
Vermont  
Virginia  
West Virginia

# Claim Closure/Settlement Experience Based on Data from ERD's Workers' Compensation Database



## Indemnity Cases

- Within **2 yrs** of injury **79.11%** of cases are inactive
  - Receipt of final benefit **87%**
  - Approved ERD Settlement **13%**
- Within **5 yrs** of injury **94.63%** of cases are inactive
  - Receipt of final benefit **84%**
  - Approved ERD Settlement **16%**

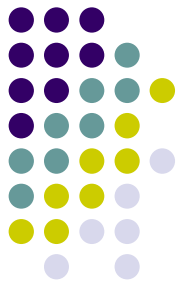
## Vocational Rehabilitation Cases

- Within **2 yrs** of injury **56.61%** of cases are inactive
  - Receipt of final benefit **99%**
  - Approved ERD Settlement **1%**
- Within **5 yrs** of injury **90.46%** of cases are inactive
  - Receipt of final benefit **99%**
  - Approved ERD Settlement **1%**

## Medical Cases

- Within **2 yrs** of injury **70.8%** of cases are inactive
  - Receipt of final benefit **99.72%**
  - Approved ERD Settlement **.28%**
- Within **5 yrs** of injury **96.11%** of cases are inactive
  - Receipt of final benefit **100%**

# **IMPACTS ON SYSTEM COSTS AND OUTCOMES FOR INJURED WORKERS**



- **Insurers continue to set reserves on open claims**
- **Reserves are included in “loss costs” used to determine manual premium rates**
- **Common Fund/Class Action Court decisions may require retroactive application of benefit payments**
  - Usually apply to claims that are not “closed” or “settled”
  - Results in significant administrative and litigation costs
  - Currently, 8 open common fund cases
- **Claims of injured workers remain open as long as they receive indemnity benefits and need medical benefits**
  - Claims close only if not used for a specific period of time
- **Insurers are required to provide all injured workers with a benefit pamphlet that explains eligibility for benefits and duration of benefits**

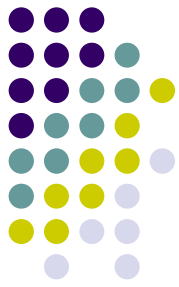
# COMPARISON OF STATES' CLAIM CLOSURE & SETTLEMENT PROVISIONS TO OREGON'S PREMIUM RANKING – 2006



## 10 STATES WITH HIGHEST PREMIUM RANKING:

	<u>Closes</u>	<u>Reopening Provision</u>	<u>Settles Meds/Criteria</u>	<u>OR Rank</u>
AK	2yrs	Worsened Condition	Yes-not favored	1
CA	1yr	Good Cause w/in 5 yrs	Yes-adequacy	2
DE	5yrs	Pd meds may extend	Rarely	3
KY	2yrs	Change of disability w/in 4yrs of award	Yes-not favored	4
MT	5yrs Med Only	Settlements-Mistake of Fact w/in 2yrs of knowledge	Yes-Disputed Meds	5
FL	2yrs	Pd med or indemnity extends 1yr	Yes-Best Interest if Pro Se May waive if Represented	6
VT	No	Settlements may reopen w/in 6yrs	Yes-Best interest	7
ME	2/6yrs	Recurring/worsened condition up to 6 years last payment	Yes-only if no agreement otherwise	8
AL	2yrs	If no settlement, worsened condition	Yes-best interest	9
NY	No		Yes-All settlements	10

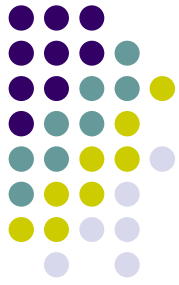
# COMPARISON OF STATES' CLAIM CLOSURE & SETTLEMENT PROVISIONS TO OREGON'S PREMIUM RANKING – 2006



## 10 STATES WITH LOWEST PREMIUM RANKING:

	<u>Closes</u>	<u>Reopening Provision</u>	<u>Settles Meds/Criteria</u>	<u>OR Rank</u>
OR	5yrs	Aggravation w/in 5yrs	NO	42
KS	3/2yrs	Before disability ends or final payment	Yes-generally close Hearing before ALJ	43
SD	7/3yrs	Dept of Labor may reopen	Yes-Disputed only	44
IA	2/3yrs	w/in 3yrs last payment	Yes-provisions of law	45
AZ	NO		Yes-Genuine dispute	46
MA	NO		Yes-Disputed Only	47
AR	2/1yrs	Commission-change of physical condition	Yes-Best interest	48
VA	NO	Settlement-24 mos last ind pd 36 mos last PPD	Yes-Best interest & Disputes	49
IN	2/1yrs	2yrs from last comp pd condition	Yes-rights of parties	50
ND	NO		Yes-Discretion of WSI	51

# COMPARISON OF STATES' CLAIM CLOSURE & SETTLEMENT PROVISIONS TO OREGON'S PREMIUM RANKING – 2006



## 6 States that Don't Allow Closure of Medical Benefits through Settlements:

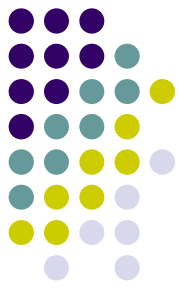
### OR Ranking

Texas	17
New Hampshire	19
New Mexico	27
Nevada	30
Washington	36
Oregon	42

## 5 States that Always or Often Close Medical Benefits through Settlements:

New York	10
Illinois	20
Rhode Island	22
Colorado	29
Kansas	43

# RECOMMENDATION TO LABOR-MANAGEMENT ADVISORY COUNCIL



## SETTLEMENTS:

- 1) **No changes to current laws or practices closing medical benefits through settlements**
  - a) No evidence of a relationship between closure of medical benefits and the Oregon ranking
  - b) No evidence of the amount of cost savings that would result
  - b) Majority of states close medical benefits similar to MT – Best interest or disputed benefits – Serves the premise that biweekly benefits and continued medical benefits are in the best interest of the claimant
  - c) Medical benefits close on settled claims anyway if not used within 60 consecutive months
  - d) Statistics from ERD's database indicate over 96% of indemnity cases are inactive within 5 yrs of injury

## STATUTORY CLOSURE OF CLAIMS:

- 2(a) **Allow for closure of all benefits – not just medical benefits – if not used for a period of 60 consecutive months**
  - a) Medical closure in effect since 1991 with no notice or reopening provisions
  - b) Injured workers who need medical treatment and indemnity benefits would continue to receive them as long as used within 60 consecutive months
  - c) May reduce costs related to Court decisions applied to retroactive open claims,

OR
- 2(b) **Make no changes to current law for closure of benefits.**

# CONTINUATION OF CLAIM CLOSURES/SETTLEMENTS TOPIC



- QUESTIONS?
- NEXT STEPS